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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,924	06/01/2001	Thomas P. Hommrich	ARIBP063	1386
21912 7590 12/31/2007 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			EXAMINER RUHL, DENNIS WILLIAM	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/871,924

Applicant(s)

HOMMRICH ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/4/07 has been entered.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-23,29,30, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 1,19,29,30, it is still unclear as to how many transportation lanes are required in the scope of the claim. If there is only one transportation lane (at least one allows for this), then how can you add any more lanes to make the lot bigger? It seems to the examiner that there must be at least two lanes required in the scope of this claim, one in the lot and another one to be added to the lot. How many lanes are in the scope of this claim? The same holds for claims 19,29, and 30, which are just repeating what is claimed in claim 1. How many lanes are required in claims 19,29,30?

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-23,29,30, are rejected under 35 U.S.C. 103(a) as being unpatentable over the article "Business-to-Business online auctions: key issues for purchasing process improvement".

For claims 1,19,21,23, the article discloses the idea of reverse auctions and how they work in assisting companies in obtaining a lower price for goods or services that the company needs. The reverse auction allow cost savings to be obtained. The article discloses that in reverse auctions lots are set up for providers of the goods or service to place bids on. The bidding can be for almost anything a company desires. The article specifically discloses that transportation services are one thing that can be bid on in reverse auctions (see page 177, 2nd column; page 178, 1st column). The article specifically states that "Companies that spend a large amount of money on ground transportation to distribute goods would do well to save 4 percent". With respect to

transportation of goods, it is inherent that there are origination and destination locations involved when a reverse auction is conducted for transportation services. The article also discloses and discusses what is called "lots" and "lotting" of items in the reverse auction. When using a reverse auction for transportation services there would inherently be "lots" as claimed that are made up of the desired transportation services from the origination location to a destination location. Each transportation route (lane) inherently has a transport value as claimed.

Not disclosed is the increasing of an area (either origination or destination) to include more lanes in the lot until the "lot" has a value that exceeds a predetermined value. This is essentially the adding of more lanes to the lot to make it larger (more items in the lot). *The examiner notes the newly added claim language reciting that it is determined whether or not the predetermined value has been met. This is not adding anything to the claims that were not already present in the last pending version. The language of "increasing ...until the lot has a value that exceeds a predetermined value" already inherently requires that it be determined if you have reached that predetermined value yet. The newly added claim language adds nothing further to the claim because the previous version inherently required the determination of whether or not the predetermined value has been met. Applicant's amendment has not changed the scope of the claim in the opinion of the examiner.*

Applicant should take notice that this missing limitation is being addressed in more than one manner in this 103 rejection and each separate obviousness statement

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should be construed as distinct rejections based on this reference. The examiner is addressing the reference with respect to transportation services.

A. The article recognizes and discusses that the buyers of the service “*may seek to reduce the number of suppliers and concentrate purchase volumes with fewer more capable suppliers*”. See page 177, 1st column. Also stated is that “*individual buyers tend to favor certain suppliers and may impose subtle barriers to rationalization*”. This suggest to one of ordinary skill in the art that the buyers may favor some suppliers over another and may desire to have less suppliers bidding as opposed to a greater number. One of ordinary skill in the art would recognize that one way to achieve this is to craft the lots in such a manner that certain suppliers are favored over others. One way this can be done is to increase the lot size to such as extent that the smaller suppliers cannot provide the services contained in the lot; therefore, effectively preventing them from even bidding on the transportation services contained in the lot. This also satisfies the claimed estimated cost limitation from claim 20 because more services result in more estimated cost as well as the claimed quantity of goods in claim 21. This would present an obstacle to smaller suppliers because they would not be able to provide the services in the lot. Having larger lots with more transportation lanes in the lot would tailor the bidding towards the larger companies who can provide that level of service and would be an obstacle to the smaller companies that are not able to satisfy the services in the lot. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the lot size above a predetermined value by adding (lotting) more lanes to the lot (expanded origination and destination

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areas) in an attempt to favor those suppliers that are larger and that can provide the services in the lot and to reduce the number of companies bidding (an attempt to prevent some smaller less capable companies from bidding).

B. Page 179 discloses that "It is critical that lotting be performed very well as it helps suppliers recognize which parts" (in this case transportation service lanes) "fit their core competencies". This also teaches to one of ordinary skill in the art that the lotting is based on a number of considerations relevant to the supplier of the services and is something that can vary from company to company depending on your prospective suppliers. It is old and well known in the business world that suppliers would prefer to secure larger contracts for services as opposed to smaller contracts. From a common sense standpoint, it would not make sense to try to auction a very large number of small lots, due to the fact that you may be dealing with a large number of different companies (a logistical concern) and because larger companies may not be inclined to bid on a large number of smaller lots when they could just bid on fewer and larger sized lots. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the lot size above a predetermined value by adding (lotting) more lanes to the lot (expanded origination and destination areas) so that the lots are of such a size that they would generate sufficient interest and entice suppliers to bid on the lot. Too small of sized lots would not be as desirable from a supplier standpoint as opposed to larger lots, because a larger lot (more lanes) means a larger contract. Evidence of this is also supported by the article on page 179 where it is stated that "*low volume lots or incorrectly lotted parts may be put aside and bid off-line*

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at a later time". Larger lots are more preferable to smaller lots because with smaller lots one would risk having the smaller lots put aside. This also satisfies the claimed estimated cost limitation from claim 20 because more services result in more estimated cost as well as the claimed quantity of goods in claim 21

C. Purely from a logistical standpoint concerning the time it takes to conduct an auction, having a large number of small lots is a lot more work than having a smaller number of larger sized lots. From a time standpoint, one of ordinary skill in the art would be motivated to increase the lots sizes so that the overall time it takes to conduct the auction is less so that the auction is efficient. A company presenting 1000 lots for transportation services would not result in a very efficient auction (very time consuming) and because of this fact would be motivated to set forth fewer larger sized lots due to time concerns. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the lot size above a predetermined value by adding (lotting) more lanes to the lot (expanded origination and destination areas) in an attempt to ensure that the auction is efficient and not too time consuming to conduct.

For claim 2, it is inherent that a list of carriers is compiled. That is inherent because as the article states, you would know beforehand who the suppliers are that would most likely be bidding on the lots. Additionally, when the auction is going on or completed, there will be a list of carriers as claimed (the ones that bid).

For claims 3,9,5,11, not specifically disclosed is that the origination area is a facility or a city. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the origination be a facility or a city, such as your

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manufacturing facility or facility location in a city, because that is where the transportation is needed. Unless your goods are sitting in a field outdoors and exposed to theft, one of ordinary skill in the art would understand that produced goods must be taken from the location of production (a facility) to the location of distribution. Facilities are routinely located in cities and are not normally located away from civilization.

For claims 4,10, all locations in the United States are covered by zip codes as defined by the US postal system. This fact is inherent.

For claims 6,7,12,13, the claimed limitations are inherent to the any location in the United States of America (a nation).

For claims 8,14, a location inherently includes a geographic area and all locations/areas are predetermined as claimed.

For claim 15, each lanes has an associated transport value and placing the lanes in lots satisfied the claimed "sorting" step.

For claims 16,17,18, not disclosed is that storing of the lanes in a database, and removing them. Because the article discloses that the reverse auction is conducted online, it would have been obvious to one of ordinary skill in the art to store the lanes in a database so that the lanes or lots can be placed online. For claim 17 as it is best understood by the examiner, when the auction is finished one of ordinary skill in the art would also find it obvious to take the lanes out of the database due to the fact the auction is completed.

For claims 22,29,30, not specifically disclosed is the claimed computer system and storage medium. The article discloses that the method is to be used for an online

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auctions. Claims 22,29, are simply claiming that a computer system that is to perform the method steps and claim 30 is reciting the computer instructions stored in a tangible computer readable medium (specification limits the storage medium to known storage devices). Because it is so well known that computers are used to assist and automate many types of processes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a computer system that has a processor and memory as claimed, so that it is easier to perform the claimed steps. This is especially obvious due to the fact that the article discloses "online auctions" where the use of computers are necessarily required. The use of a computer would allow one to arrange and make the lots much quicker than would be possible by hand.

7. Claims 1-23,29,30, are rejected under 35 U.S.C. 103(a) as being unpatentable over the article "Business-to-Business online auctions: key issues for purchasing process improvement" in view of "The Stamp Center".

For claims 1,19,20-23, the article discloses the idea of reverse auctions and how they work in assisting companies in obtaining a lower price for goods or services that the company needs. The reverse auction allow cost savings to be obtained. The article discloses that in reverse auctions lots are set up for providers of the goods or service to place bids on. The bidding can be for almost anything a company desires. The article specifically discloses that transportation services are one thing that can be bid on in reverse auctions (see page 177, 2nd column; page 178, 1st column). The article specifically states that "Companies that spend a large amount of money on ground

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transportation to distribute goods would do well to save 4 percent". With respect to transportation of goods, it is inherent that there are origination and destination locations involved when a reverse auction is conducted for transportation services. The article also discloses and discusses what is called "lots" and "lotting" of items in the reverse auction. When using a reverse auction for transportation services there would inherently be "lots" as claimed that are made up of the desired transportation services from the origination location to a destination location. Each transportation route (lane) inherently has a transport value as claimed.

Not disclosed is the increasing of an area (either origination or destination) to include more lanes in the lot so that the "lot" has a value that exceeds a predetermined value. This is essentially the adding of more lanes to the lot to make it larger (more items in the lot).

"The Stamp Center" discloses that it is known in auctions to have a minimum lot size. The examiner is using this reference in the rejection to show that minimum lot sizes are known in the art; however one of ordinary skill in the art of auctions would clearly recognize that it is old and very well known to have minimum sizes for lots when conducting auctions. This also seems to be supported by the reverse auction article itself because on page 179 it is disclosed that lots vary in size from \$100,000 to \$1,000,000. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the size of the lots by adding more lanes as claimed so that you are adhering to a predetermined minimum lots size as taught by the Stamp

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Center article, as is known in the art. The lots size is directly related to not only the dollar amount, but also is related to the quantity of goods.

For claim 2, it is inherent that a list of carriers is compiled. That is inherent because as the article states, you would know beforehand who the suppliers are that would most likely be bidding on the lots. Additionally, when the auction is going on or completed, there will be a list of carriers as claimed (the ones that bid).

For claims 3,9,5,11, not specifically disclosed is that the origination area is a facility or a city. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the origination be a facility or a city, such as your manufacturing facility or facility location in a city, because that is where the transportation is needed. Unless your goods are sitting in a field outdoors and exposed to theft, one of ordinary skill in the art would understand that produced goods must be taken from the location of production (a facility) to the location of distribution. Facilities are routinely located in cities and are not normally located away from civilization.

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For claims 22,29,30, not specifically disclosed is the claimed computer system and storage medium. The article discloses that the method is to be used for an online auctions. Claims 22,29, are simply claiming that a computer system that is to perform the method steps and claim 30 is reciting the computer instructions stored in a tangible computer readable medium (specification limits the storage medium to known storage devices). Because it is so well known that computers are used to assist and automate many types of processes, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a computer system that has a processor and memory as claimed, so that it is easier to perform the claimed steps. This is especially obvious due to the fact that the article discloses "online auctions" where the use of computers are necessarily required. The use of a computer would allow one to arrange and make the lots much quicker than would be possible by hand.

8. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. There is absolutely no discussion of the references at all other than just mentioning their names. Applicant has not addressed the rejection in any substantive manner and has more or less just stated that the claims are allowable because of the claim language. There is no discussion or traversal of the rejection and the reasoning set forth by the examiner. Applicants arguments are not in compliance with 37 CFR 1.111(b). The examiner notes the newly added claim language reciting that it is determined whether or not the predetermined value has been met. This is not adding anything to the claims that were not already present in the last pending version. The language of "increasing ...until the lot has a value that exceeds a predetermined value" already inherently requires that it be determined if you have reached that predetermined value yet. The newly added claim language adds nothing further to the claims because the previous version inherently required the determination of whether or not the predetermined value has been met. You increase the size until the predetermined value is met, this necessarily already required the determination of whether or not the predetermined value has been met yet. Applicant's amendment has not changed the scope of the claim in the opinion of the examiner.

With respect to the 112,2nd rejection for claims 1,19, applicant has not addressed or even amended the claim to address the issue behind the rejection. The 112,2nd rejection is being maintained because applicant has not addressed it on the

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merits or amended the claim in any manner to overcome the rejection. Since no real arguments have been made for patentability, all rejections are being maintained.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DENNIS RUHL
PRIMARY EXAMINER